

CORRESPONDENCE
RELATIVE TO
THE DISMISSAL
OF
DR. RUSSELL

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CORRESPONDENCE
RELATIVE TO
THE DISMISSAL
OF
DR. RUSSELL
FROM THE
Commission of the Peace.

Quis statuit aliquid parte inauditâ alterâ,
Æquum licet statuerit, haud æquus fecit.

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INTRODUCTION.

What is now presented to the public relates to a matter with which the Quebec Press has already made many familiar,—the removal of Dr. Russell from the Commission of the Peace for this District.

Dr. Russell attributes his dismissal, in some measure, to a desire, on the part of the Imperial Government, to gratify the authorities of Prussia shortly after the marriage of the Princess Royal, and Sir Edmund Head's readiness to obey his instructions to that effect, from Downing Street, but mainly to the resentment and interference of two persons,—office-holders,—whose implacable enmity he has incurred for having told them some wholesome truths.

The Correspondence shews, at least, that the present Administration, regardless of even decorum in their injustice, have removed Dr. Russell from the Magistracy without giving him an opportunity of being heard in his defence. That a Ministry, which has departed from every other principle hitherto respected, should have departed from the first principle of national justice,—that no man shall be condemned without being heard,—is not to be wondered at, any more than that, by means of their Printing Committee, they should have prevented the Correspondence from being published in the ordinary way, when brought down to the House of Assembly.

It is owing to the refusal of the Committee to have the Correspondence printed as laid before Parliament, that Dr. Russell is obliged to take this means of vindicating his conduct, as a Justice of the Peace, in the eyes of his friends and the public generally.

On the 18th April, 1859, an Address was ordered for copies of papers relative to the dismissal of Dr. Russell from the

Commission of the Peace, but no return was made to it until a notice of an inquiry as to the reason was given at the opening of the present Session. The Correspondence had been copied for nearly a year, but was detained in the Provincial Secretary's Office until the 9th March, 1860, merely because that functionary was displeased with an allusion, in the letter of the 26th February, 1859, personal to a connexion of his,—who is one of Dr. Russell's enemies already referred to; and, having no other alternative, Dr. Russell, when requested so to do, on behalf of the Government, was forced to consent to the omission of the obnoxious words, in order that the Correspondence might be laid before the Legislative Assembly.

The assertion in the Provincial Secretary's Memorandum for the Executive Council, that Dr. Russell did not acknowledge the letter of the 27th November, 1858, is but another illustration of the truth of the saying that those who are resolved upon a bad action are seldom at a loss for an excuse. To set the public right in a matter of fact it may be stated, as the reader cannot fail to notice, that the letter of the 27th November, 1858, was a mere reply to Dr. Russell's letter of the 23rd November, 1858. It is seldom, indeed, that one hears an answer being required to an answer; but, if any acknowledgment of the letter were desired, should not the Secretary have asked for it, as he took care to do, in most bland and courteous terms, when communicating to the Clerk of the Peace, the order for Dr. Russell's dismissal from the Magistracy?

Dr. Russell, however, confidently appeals to the good sense of his friends and the public, and willingly submits to their judgment, as to whether he has been rightly and fairly dealt with by the Ministry.

CORRESPONDENCE
RELATIVE TO
THE DISMISSAL
OF
DR. RUSSELL

From the Commission of the Peace.

SECRETARY'S OFFICE,
TORONTO, 13th Nov., 1858.

Dr. R. H. RUSSELL, J. P.
Quebec.

SIR,—The attention of the Executive having been directed to the proceedings taken in July and August of last year against Captain Brocksch, of the Prussian Barque “Joseph Earle,” and more particularly to your conduct in your magisterial capacity, in taking affidavits in a language of which it would seem you knew the deponents to be ignorant, and your demeanour while the Police Magistrate was taking the evidence of O’Leary, one of the witnesses,—I have it in command from His Excellency the Governor General to transmit to you the accompanying copy of affidavits taken on that occasion, and to request you to make thereon, for the information of His Excellency, any remarks which you may wish to offer.

I have, &c.

(Signed,) C. ALLEYN.

QUEBEC, 23rd Nov., 1858.

SIR,—I have the honor to acknowledge the receipt of your letter of the 13th instant, informing me that “the attention of the Executive having been directed to the proceedings taken in July and August of last year against Captain Brocksch of the Prussian Barque ‘Joseph Earle,’ and more particularly to my “conduct in” my “magisterial capacity, in

taking affidavits in a language of which it would seem " I "knew the deponents to be ignorant, and " my "demeanor while the Police Magistrate was taking the evidence of O'Leary, one of the witnesses," and that you "have it in command from His Excellency the Governor General to transmit to me "a copy of affidavits taken on that occasion and to request" me "to make thereon, for the information of His Excellency, any remarks which " I "may wish to offer."

In reply, I beg to acquaint you, for the information of the Governor General, that I shall, with as little delay as possible, comply with the request expressed by His Excellency.

Meanwhile, I would respectfully solicit that I may, as is usual in like cases, be favored by His Excellency with a copy of such documents, other than the affidavits transmitted to me, as particularly directed the attention of the Executive to the proceedings referred to. I am the more necessitated to make this request on account of the length of time which has been allowed to elapse before my conduct in my magisterial capacity on the occasion has been brought under the notice of the Executive—a period greatly beyond that within which, under the laws affording protection to Magistrates, any suit or action can be brought, in a Court of Law, against a Justice, for anything done by him in the performance of his duty; and I do confidently hope that His Excellency (to whom you will be pleased to submit this expression of my desire,) will not consider this case: one with reference to which His Excellency should adopt a course different from that hitherto invariably pursued.

I have the honor to be, Sir,
Your obedient servant,

(Signed,) R. H. RUSSELL,
M. D. Edinr.

TORONTO, 27th Nov., 1858.

SIR,—In reply to your letter of the 23rd instant, asking for a copy of such documents, other than the affidavits transmitted to you, and particularly directing the attention of the Executive to the proceedings referred to, I have the honor to inform you that you have been furnished already with copies of all the documents necessary to enable you to afford the explanations required from you by my letter of the 13th instant, and that it is considered that the transmission to you of any

additional documents connected with the matter would tend to no useful or legitimate end.

I have &c.

(Signed,) CHARLES ALLEYN.

R. H. RUSSELL, Esq.

M. D., J. P.
Quebec.

The undersigned has the honor to report that on the 13th November last, Dr. R. H. Russell was written to as recommended by the Hon. Sol. Gen. East; on the 23rd November Dr. Russell wrote in reply and requested further information which was refused on the 27th November, since when he has not explained the charges against him as requested to do by letter of the 13th November, nor has he acknowledged the letter of the 27th ultimo.*

22nd December, 1858.

(Signed,) C. ALLEYN.

Copy of a Report of a Committee of the Honorable the Executive Council, dated 22nd December, 1858—approved by His Excellency the Governor General in Council on the 23rd December, 1858.

On the several papers relative to certain proceedings at Quebec before Dr. R. H. Russell, J. P., against Captain Brocksch, of the Prussian Barque "Joseph Earle," who was charged with having discharged a loaded pistol at one Thomas O'Leary, with intent to kill him.

From the Report dated 30th October, 1858, of the Honorable the Solicitor General for Lower Canada, it appears that the proceedings of the magistrate, Dr. R. H. Russell, are such as he, the Solicitor General, thinks, call for the action of the Government; that Dr. Russell's conduct in relation to swearing persons to affidavits written in a language of which it would seem he could not but be aware they were ignorant, his apparent partizanship throughout, and his demeanour when the Police Magistrate was examining O'Leary, are circumstances which, if true, would, in the opinion of the Solicitor General, warrant Dr. Russell's dismissal from the Commission of the Peace.

* The letter of the 27th ultimo, required no acknowledgment, being merely an answer to the request contained in Dr. Russell's letter of the 23rd November, as the reader will perceive.

The Solicitor General therefore recommended that copies of the affidavits should be forwarded to Dr. Russell, for any remarks that he may wish to make thereon, and that if no satisfactory explanations are given, he should be removed from the Commission.

The Honorable the Provincial Secretary, in a memorandum dated 22nd December, 1858, reports that on the 13th Nov. last, Dr. R. H. Russell was written to as recommended by the Honorable Solicitor General East: that on the 23rd November Dr. Russell wrote in reply and requested further information, which was refused on the 27th November, since when he has not explained the charges against him, as requested to do by the letter of the 13th November, nor has he acknowledged the letter of the 27th ultimo.*

The Committee respectfully recommend the dismissal of Dr. Russell from the Commission of the Peace, as suggested by the Solicitor General.

Certified.

(Signed,) WM. H. LEE,
C. E. C.

TORONTO, 8th January, 1859.

SIR,—I have the honor to transmit to you the enclosed copy of an order in Council, showing what action has been taken by the Government of Canada, on the representation made by the Prussian Minister at the Court of St. James, in relation to the proceedings in the case of Captain Brocksch, of the Prussian Barque "Joseph Earle."

I have, &c.

(Signed,) E. PARENT.

The Governor's Secretary,
Toronto.

TORONTO, le 12 Janvier, 1859.

MONSIEUR,—J'ai l'honneur de vous transmettre sous ce pli, un instrument qui destitue Mr. Robert Henry Russell, de la charge de Juge de Paix pour le District de Québec. Veuillez, s'il vous plait, m'en accuser réception.

J'ai, etc.

(Signé,) C. ALLEYN.

* Vide Note to page 3.

BUREAU DE LA PAIX,
Québec, 15 Janvier, 1859.

MONSIEUR,—J'ai l'honneur d'accuser réception de votre lettre du douze Janvier courant, accompagnée d'un instrument destituant Mr. Robert Henry Russell, de la charge de Juge de Paix pour le District de Québec.

J'ai l'honneur d'être, Monsieur,
Votre très obéissant serviteur,

(Signé,) P. A. DOUCET,
Greffier de la Paix.

A L'Honorable, CHARLES ALLEYN,
Secrétaire Provincial,
Toronto.

QUEBEC, 26th February, 1859.

SIR,—In my letter of the 23rd of November last, I had the honor to acquaint you, for the information of the Governor General, that I intended, with as little delay as possible, to comply with the request expressed by His Excellency, in your letter of the 13th of that month, that I should make, on certain affidavits, a copy of which was then transmitted to me "any remarks" I might "wish to offer," in relation to "the proceedings taken in July and August, 1857," against Captain Brocksch, of the Prussian Barque, 'Joseph Earle,' and more particularly in reference to my "conduct in" my "magisterial capacity, in taking affidavits in a language of which, it would seem" I "knew the deponents to be ignorant, and" my "demeanor while the Police Magistrate was taking the evidence of O'Leary, one of the witnesses," to which proceedings, you stated, the attention of the Executive had been directed.

Although your letters assigned me no limit as to time, for offering the remarks called for by His Excellency, I have endeavored to obey his command as promptly as circumstances would allow, and have the honor now to submit the explanations required of me. The affidavits and other documents forwarded herewith, for the consideration of His Excellency, will, I trust, leave no doubt on his, or any unbiassed mind, of the unswerving uprightness of my motives, and of the perfect legality of my judicial acts, in the case of Captain Brocksch.

First amongst the circumstances which have prevented my sooner complying with His Excellency's request, I may be permitted to mention the unexpectedness with which I received intimation of the same, at the close of the navigation—when seafaring men, such as those best acquainted with the facts of the case in question, were not likely to be found in Quebec,—and after the lapse of eighteen months from the proceedings adverted to,—a period, as already observed in my letter of the 23rd of November, greatly beyond that within which, under the laws affording protection to Magistrates, (14 and 15 Vic., c. 54, sec. 8.) any suit or action can be brought, in a Court of Law, against a Justice of the Peace, for any thing done by him in the performance of his duty.

The wisdom of the legislative enactment to which I refer, His Excellency will not, I am confident, question; yet I, respectfully, am of opinion he has countenanced a departure from the principle it establishes, in my case, and that I have been exposed to the very hardship and inconvenience this Statute was framed to obviate.

The party injured by a Magistrate, in the discharge of his duty, is barred of his remedy altogether, unless he commence an action within six months next after the act complained of shall have been committed,—and this to protect the Justice, lest, after the lapse of such a time, he may not be enabled, on account of the absence of witnesses, to justify his conduct. It is from the very difficulty thus apprehended that I have suffered.

It being on the affidavits, a copy of which was transmitted to me, that I was directed to afford His Excellency the information demanded, I considered that,—apart from the well known rule requiring the accused to answer the charge preferred against him by testimony as authentic and valid as that adduced in support thereof,—it would be more satisfactory to His Excellency, as it was to myself, that I should reply to the statements impugning any conduct by the evidence of other persons, likewise given under the sanctity of oath. The carrying out of this determination occupied some time, and the disadvantage I experienced was that anticipated by the Legislature in passing the Act above mentioned. Mr. Busch, a most material witness for my defence, was dead; Mr. Abraham Solomon, Mrs. O'Leary, her servant-maid, and other persons from whom I could have obtained important testimony, had left the Province; and the interval of time was such that unwilling witnesses,—individuals under the control of "the Police Magistrate,"—could and did impute to their memory what was not so much a want of that faculty, as of candour, of honesty, and of independence.

Another circumstance which has tended to retard my compliance with His Excellency's demand, has been the want of a definite statement of the charges against me.

Having reason to be aware that the affidavits transmitted with your letter of the 13th of November, were not the only documents in possession of the Government concerning the proceedings referred to, I took the liberty, in my letter of the 23rd of that month, to ask for a copy of such documents, other than those affidavits, as particularly directed the attention of the Executive to my conduct. This request His Excellency, it appears, did not see fit to grant, and you informed me, in your letter of the 27th of November, that it was "considered that the transmission to" me "of any additional documents, connected with the matter, would tend to no useful or legitimate end." With every respect for His Excellency's opinion, I may be allowed to state that those documents would have been of much service to me. The probability is they would have saved me the trouble of repeatedly perusing the fifty-five folio pages of written matter,—whereon I was asked "to make any remarks" I might "wish to offer," "for the information of His Excellency," in search of the precise averments reflecting upon my conduct and proceedings, in the case of Captain Brocksch.

To minutely scan every word of this voluminous record, to see the bearing of every fact alleged, and consider how the many falsities it contained could be best refuted, was, I need hardly state, a work which required both time and attention,—time that I could scarcely afford to devote to other business than that of my profession, which is my means of livelihood, and attention and examination such as none but a person learned in the law could properly or speedily give to the subject.

A third circumstance which has occasioned me much delay, was the obtaining of Mr. O'Farrell's affidavit, as explained therein by himself; and lastly, I would mention a family bereavement, necessitating my absence from Quebec.

The documents forwarded to me with your letter of the 13th of November, consist of copies of the affidavits of Shiell, Linz, O'Leary, Strobaun, Arendt, Radzam, Smith, Grichnen, and Müller, taken by me,—and of copies of the depositions of Dr. Jackson, Lintner, Dr. Reed, Smith, Russell, Woodhouse, Cunningham, Battle, Corcoran, Neilan, Radzam, Grichnen, Pratton, Pope, Dr. Moffat, Foy and Murphy, taken by the "Police Magistrate."

I presume that I shall not have been supposed to have taken affidavits to prove charges against myself. I need not, therefore, further allude to those taken by me than to say

that they relate solely to the circumstances of Captain Brocksch's offence.

The depositions, twenty-one in number, taken by Mr. Maguire, may be said to comprise, amid evidence as to the prisoner's crime, results of the experience of the Police as to the practice, at the Port of Quebec, of discharging fire-arms from ship-board during the night, medical conjectures, and other equally irrelevant matters, the statements on which I have been called upon to offer remarks for the information of His Excellency.

Those twenty-one affidavits, on being carefully examined, tend only, so far as I can perceive, to impugn my conduct in two particulars.

First,—It is pretended that, in the words of your letter of the 13th of November, my “demeanour while the Police Magistrate was taking the evidence of O’Leary, one of the witnesses,” was not correct.

Secondly,—To use the same diction, that my “conduct in” my “magisterial capacity, in taken affidavits in a language of which it would seem” I “knew the deponents to be ignorant,” was illegal and improper.

To shew the groundlessness of these charges it is not necessary to enter fully into the merits of Captain Brocksch's case.

With respect to the first charge, I would respectfully submit that “The Police Magistrate” was not in the execution of a judicial duty, at O’Leary’s house, on the occasion adverted to by His Excellency. “The Police Magistrate” was unquestionably, on that occasion, acting illegally, and by bringing the Captain openly and visibly armed, though a prisoner in the custody of the law, into the presence of O’Leary, whom he (Brocksch) had so lately and so deeply injured, Mr. Maguire put in great peril the life of the wounded man, and caused him excitement which it was subsequently endeavored to account for by attributing to me language I never uttered.

As to the fact that the Captain was armed, when a prisoner at O’Leary’s house, I refer to the affidavit of Deputy Chief of Police Reynolds, (Appendix No. 1); and as to the effect of the Captain being so armed, I refer to the affidavits of O’Leary and his wife, (Nos. 2 and 3.)

The affidavits of Mr. O’Farrell (No. 4.) Mr. McTaggart (No. 5.) and Deputy Chief of Police Reynolds (No. 1.) shew that “the Police Magistrate” was not in the discharge of an official duty, at O’Leary’s house, and further establish the following facts: That Thomas O’Leary, alleging himself to have been wounded by a shot fired from on board a Prussian

vessel, became desirous of prosecuting the offender, and for that purpose retained the services of Mr. O'Farrell, as Counsel. That Mr. O'Farrell repeatedly called at Mr. Maguire's house, in Quebec, to put him in possession of the case, but without seeing that functionary, he being absent from home, on a fishing excursion. That Mr. O'Farrell, at the suggestion of the Deputy Chief of Police, then sought me out, to possess me, as a Magistrate, of the case, but that I peremptorily refused to accede to his request that I should act. That Mr. Reynolds, by representing to me the absence of "the Police Magistrate," and the necessity of prompt action, to secure the person of the offender, caused me to yield so far as to accompany him to O'Leary's house. That on arriving at O'Leary's, I found his condition much more serious than I had anticipated, and, after seeking the assistance of the Clerk of the Crown and Peace, I proceeded to take up the case, and upon due evidence of the commission of a capital felony, issued my warrant, for the immediate apprehension of a person to be pointed out. That I entrusted the warrant to the River Police, for execution, and that they were accompanied to the vessel by a man who had undertaken to identify and indicate the person by whom O'Leary had been shot. That Captain Brocksch admitted to Coxswain John Battle, before the arrest, that he (the Captain) had shot O'Leary. That in obedience to the warrant, the River Police arrested Captain Brocksch, and brought him before me, on the morning of the 27th of July, 1857, when, in one of the rooms of the Court House appropriated to the criminal business of the District, I proceeded to investigate the case, in the presence of the accused, and of the prosecutor's Counsel and witnesses; and that, at this stage of the proceedings, while I was examining the charge, as I lawfully might, and as no other Justice lawfully could do without me, or against my will, "the Police Magistrate," who was in another room, caused the Prussian Captain to be removed from before me, and had him conveyed into his (Mr. Maguire's) private office, by a superior force which I had neither the power nor the inclination to resist. I had not the power, because the Police who removed the prisoner were entirely dependent on Mr. Maguire's will, nor had I the inclination since I have imbibed the opinion of the author whom I shall presently cite that such contests are "indecent."

For the purpose of shewing that under the circumstances disclosed by those affidavits (Nos. 1, 2, 3, 4 and 5) "The Police Magistrate" was acting illegally at O'Leary's house, on the occasion adverted to by His Excellency, I have the

honor of quoting the following, from Paley on Convictions, Chapter 1, sec. 5 :—

“Priority of Jurisdiction.—All the Justices of each District
“are equal in authority, but, as it would be contrary to the
“public interest, as well as indecent, that there should be a
“contest between different Justices, *it is agreed, that the*
“*jurisdiction in any particular case attaches in the first set of*
“*Magistrates, duly authorised, who have possession and cognizance*
“*of the fact, to the exclusion of the separate jurisdiction of all*
“*others. So that the acts of any other, except in conjunction*
“*with the first, are not only void but such a breach of the law as*
“*subjects them to indictment.*”

The depositions taken by “the Police Magistrate” himself, in fact, prove that the jurisdiction in Captain Brocksch’s case was vested in me, and I humbly submit that if any one should be called upon to account for his demeanor in O’Leary’s, it is Mr. Maguire, who was an intruder there, and whose interference in a case of which I was rightly seized, was not only illegal, but, under the foregoing authority, subjected him to indictment.

His Excellency, evidently unaware of the circumstances, has assumed that it was “the Police Magistrate” and not I, who had first possession and cognizance of the facts. I trust that I have succeeded in removing this impression, and that His Excellency, will now be convinced, as I ever have been, that the Police Magistrate, “when taking the evidence of O’Leary, one of the witnesses,” was acting in open defiance of the law, and the rule invariably observed on such occasions, and that his conduct led to what Paley calls an “indecent” contest, and to a most terrifying display on the part of the prisoner, wholly subversive of all order and authority.

The laws of Lower Canada effectually provide for the protection of Magistrates, in the discharge of their duties, and I have little doubt that had my conduct been such as Mr. Maguire could, at all, hope to persuade a Court and Jury, was illegal, he would not have long hesitated about appealing to them for redress. Had his character been injured by me, a double remedy was open to him by action and indictment.

He has not ventured to seek either of these remedies, and I, therefore, confidently hope the Executive will not interpose its arbitrary discretion, to supersede the known customs and statutes of the country, by prescribing or regulating what shall be the demeanor to be observed towards him, or any other of Her Majesty’s subjects in this Province.

The second charge endeavored to be trumped up against me,—that, in my magisterial capacity, I took affidavits in a language of which it would seem I knew the deponents to

be ignorant,—is as groundless as I have shewn the first one to be.

This charge, I presume, refers to the depositions of Radzam and Grichnen, and is completely refuted by the affidavit No. 4, appended hereto, which further proves the great care observed by me throughout the investigation.

Although Radzam and Grichnen, but especially the former, understood English sufficiently well to justify my taking their depositions without the assistance of an interpreter, yet, prompted by that caution which made me seek the advice of the then Solicitor General, upon the points of law which arose in the case (as shewn by his letter, Appendix No. 6.) I insisted, before swearing Radzam and Grichnen, upon having their affidavits translated to them by an Interpreter.

Radzam's and Grichnen's affidavits, as well as those of some others of the deponents, were translated to them by the late Mr. George T. Busch, who was sworn faithfully to interpret the same, and whose services I personally procured for the purpose. (See affidavit No. 4.)

It unfortunately too often happens that witnesses of the stamp of Radzam and Grichnen, after having been made to swerve from the path of truth, by means such as the affidavits of Strobans and Arendt establish, were adopted in this case, endeavor to account for the contradictions, prevarications and discrepancies in their testimony, by charging the Magistrate or his clerk, who reduced their first depositions to writing, with negligence and inaccuracy. I might, if necessary, instance several cases in which this has occurred, even with respect to affidavits taken by Mr. Maguire himself, but I conceive the trick is so well known, that I need only mention it to shew that it is more than probable it was resorted to by both Radzam and Grichnen.

It appears, however, from their own depositions, that both these men understood English.

One of them (Radzam) states that, although the person who wrote down his affidavit did not speak Prussian, yet he (Radzam) understood Mr. O'Farrell to say, that, upon being bound over to appear against Brocksch, he (Radzam) and his shipmates would receive their discharge from the "Joseph Earle," and \$1 per day,—that he (Radzam) answered the several questions which were put to him, and that he told me he could swear to the contents of his affidavit. To have comprehended and said all this, must have required a fair knowledge of the English language on the part of Mr. Radzam.

As to the other man, Grichnen, though his deposition before me does not cover many lines, he, too, betrays in that made by him before Mr. Maguire, that he is not so unac-

quainted with the English tongue as he pretends, for he says that he was asked by me whether he could swear to the contents of his affidavit, and that he answered yes.

Robert Smith, another of the deponents, swears that his deposition before me was not read to him. This is true, so far, but he should have added that he read it himself before signing it, and that it was because I knew he did so, that I did not enquire whether he "had ever heard it read."

I would further remark that Radzam and Grichmen belong to a class of witnesses whose evidence should be received with the utmost suspicion and caution. From their own mouths I judge them. Do they not both aver in their depositions before "the Police Magistrate," that they signed and swore, before me, to affidavits written in a language unknown to them, and containing, if they are to be believed, statements to which they could not testify? If, therefore, upon one occasion, they could so lightly regard the solemn obligation of an oath, as to swear to facts of which they had no knowledge, what assurance has His Excellency that, when they were sworn before Mr. Maguire, they were not equally regardless of that obligation, and unscrupulous as to the evidence they gave.

Having thus disposed of the only charges which the affidavits transmitted to me go to establish, and shewn, satisfactorily, I hope, the unfounded nature of the same, I would crave permission to direct the attention of His Excellency to the character of the testimony which has been adduced against me.

The whole of the affidavits imputing misconduct to me were taken before Mr. Maguire, "the Police Magistrate." Now it is notorious that, for years past, a quarrel has existed between that functionary and myself. Convinced, as the Board of Trade, the mercantile community, and, indeed, the public generally of Quebec were, of his total unfitness for the office which he holds, I openly expressed, at the time of his appointment, my objection thereto, and my surprise at his nomination. This, Mr. Maguire deemed sufficient cause for a malignant hatred on his part, which has since subsisted and made him seek every opportunity of annoying and injuring me. Not content with exhibiting his malice in private life, he allowed it to sway his judgment on the Bench, in cases wherein I was concerned, and to such an extent as to force me to complain of his malversation to the Government and the Legislature. His Excellency is well aware that I, in common with a large number of my fellow citizens, have brought under his notice, on more than one occasion, acts of oppression committed by "the Police Magistrate," and have sought

redress for the same. Mr. Maguire, then, being the Magistrate who took the depositions which have directed the attention of the Executive to my proceedings, in the case of Captain Brocksch, and who, in fact, has got up these charges against me, will His Excellency,—notwithstanding the enmity of which I speak,—take it for granted that “the Police Magistrate” has acted impartially,—that he has “set down naught in malice,”—that he has not suppressed anything which might be in my favor,—or, considering that the witnesses were foreigners, and that their affidavits were being taken in English, that he did not color their evidence, or make it stronger than it might have been in their own language? I must confess that my credulity is not so great, nor my knowledge of Mr. Maguire so little, as to incline me to any such belief in his fairness and honesty.

I have said that I should be sorry to vouch for the integrity of “the Police Magistrate” in any case to which I might be a party. The opinion I have formed of the veracity of his principal witnesses is, I am obliged to state, almost as low. Pratton and Foy are two employés in the Police Office, completely under the control and dependent upon the will of Mr. Maguire for their means of livelihood. It is not surprising that such persons preferred their bread to testifying in my favor, any more than it is that Doctors should disagree, and the most contemptible amongst them vent their spite by a violation of the Ninth Commandment, which they foolishly imagined would never come to the knowledge of the party whom they were attempting to injure.

All the depositions which impugn my conduct have been taken as part of an investigation of a charge of capital felony. That the ends of justice had less to do with the enquiry than private resentment, is evident from the fact that, while much importance was attached to every act of mine, and particulars thereof fully entered into, the examination of the charge of felony was so inefficiently conducted, that the culprit was suffered to escape even the form of a trial, and to this day the perpetrator of a most flagrant outrage on a peaceable citizen of Quebec, has not answered for his crime. The quibble on which Captain Brocksch was discharged from custody by Mr. Maguire, is one which any man of sense must see through. Dr. Jackson swore that a leaden ball, which he produced as having been received by him from O’Leary, the wounded man, was much too large for either of the two pistols placed in the hands of “the Police Magistrate,” by the Mate of the “Joseph Earle,” the prisoner’s most intimate friend. But Dr. Jackson did not swear positively that the ball he so tried to fit into the pistols was the very one he had received from

O'Leary, and that he had taken every possible precaution to justify his certainty of this fact. Moreover, August Müller, the Steward of the vessel, testified to a circumstance which "the Police Magistrate" completely overlooked in his desire to fix misconduct upon me. That witness, who had the best possible means of knowing what fire-arms Captain Brocksch possessed, swore that, during the afternoon previous to O'Leary's being shot, the prisoner, Brocksch, loaded three pistols, two horse-pistols and a smaller one. Surely it is not too much to suppose that the prisoner's friend, the Mate of the ship, who so obligingly brought two pistols to Mr. Maguire, might have concealed the third, and it the very one from which the ball that struck O'Leary was discharged.

In concluding the remarks called for by His Excellency, I have again to express the hope that, should he be of opinion I have not satisfactorily answered everything charged against me, he will take into consideration, the very great hardship, already represented, of being called upon to explain my conduct after so long an interval. I have been at a loss to find a reason for my being subjected to this inconvenience, and can only attribute it to the fact that shortly before the receipt of your letter of the 13th November, I was publicly threatened by Mr. Andrew Stuart, Government Attorney in this District, and brother-in-law of the Provincial Secretary, with the deprivation of my commission as a Justice of the Peace.*

His Excellency, in causing to be transmitted to me the affidavits whereon I have now commented, only acted on one of the first principles of national justice,—that no man shall be condemned without being heard. I am glad to have this opportunity of vindicating my conduct in my magisterial capacity, and of shewing that, in Captain Brocksch's case, I proceeded most conscientiously, and acted under the advice of the Law Officers of the Crown, with a sincere desire to discharge the duties of my office, and to do what was for the benefit of society and the maintenance of personal security.

I have the honor to be, Sir,
Your ob't. humble servant,

R. H. RUSSELL, M. D. E.

HON. C. ALLEYN,
Provincial Secretary.

Toronto.

* The cause of the threat referred to was stated in this paragraph of the letter, as originally sent to the Provincial Secretary, but was subsequently struck out, as explained in the Introduction to this Correspondence.

APPENDIX No. 1.

PROVINCE OF CANADA, }
DISTRICT OF QUEBEC. }

Edward Reynolds, of the City of Quebec, Deputy Chief of Police for the City of Quebec, being duly sworn, doth depose and say:

I have been asked to give an affidavit in the case of the complaint against Dr. Russell, but it is so long ago, that, having had no idea that I would ever be called to give evidence about it, I cannot speak positively as to all that happened, but to the best of my recollection and belief, here is what happened.

One Sunday evening, sometime in July last was a twelve-month, Mr. O'Farrell and McTaggart came into the Cul-de-Sac Police Station, where I was at the time. After Mr. O'Farrell came in, he tried for a long time to get us to go and arrest a Captain that, he said, had shot O'Leary the night before. Mr. O'Farrell had no warrant with him for the Captain, and we told him that there was no use in expecting us to go and arrest a man without some authority for it. He told us that it was a case of felony, and that we did not need a warrant. He talked also about the Captain being ready for sea, and all that sort of thing, and about his not having been able to find Mr. Maguire, as he said Mr. Maguire was away on a fishing excursion; but we would not act without a warrant, and we told him that there were plenty other Magistrates that he could go to.

Somebody there, I think it was some of our men, asked Mr. O'Farrell, if he was quite sure that Mr. Maguire was not in town. Mr. O'Farrell then asked me to go with him as far as Mr. Maguire's; I did not hesitate, but went with him; and, when we got there, the girl told us that Mr. Maguire was away on a fishing excursion in the country.

I next said to Mr. O'Farrell that we ought to go to some other Magistrate; and Mr. O'Farrell said he thought no one would care about meddling with the case, as it was Sunday, and as there was no pay to be had for it, and that what made it more unlikely to get any one to act, was that it was a case against a Ship-Captain. I then said that there was Dr. Russell that did not care anything about Ship-Captains, and that we ought to try him. Mr. O'Farrell said "very well," and away we went in search of Dr. Russell. We first went to the Doctor's house, and we next went to look for him in the Suburbs. I saw McTaggart with us when we were at Mr.

Maguire's; but I cannot say whether he followed us to the Suburbs in search of Dr. Russell, and the next sight that I got of McTaggart was down at Scully's, in Champlain Street, where we found Dr. Russell, about eleven o'clock, attending to Scully's child. After the Doctor had done with the child, Mr. O'Farrell began to explain to Dr. Russell what had happened to O'Leary, and that he suspected the Captain was hid in young Denis Maguire's house. The Doctor got a little angry with Mr. O'Farrell, and said to him to be off to Mr. Maguire's, who was paid for it, and that he would have nothing to do with it, but to go to Mr. Maguire.

When I saw how things were getting on, I said to the Doctor that Mr. Maguire was absent, that there was no other Magistrate to be had, and that unless the Doctor took up the case, the Police would not move a step without a warrant, and the Captain would clear out before Mr. Maguire could be back the next morning. The Doctor listened to what I said, and consented, at last, to go and look at O'Leary, and see if he was as sick as we stated him to be. When we went into O'Leary's, I saw two other Doctors there, Drs. Jackson and Moffatt; Dr. Jackson began to scold Dr. Russell for coming there to interfere with his patient. When Dr. Jackson began to scold, that way, I put on my hat and walked down stairs again. When I got to the foot of the stairs, I heard Dr. Russell telling Dr. Jackson that he did not come there to meddle that way, that it was I who had brought him there to take steps to arrest the Captain, if necessary, or something of that kind. I am sure that the Doctor did not say to Dr. Jackson that it was Mr. O'Farrell brought him there to give evidence as a Doctor; and moreover I know quite well that it was not as a Doctor that Dr. Russell went to O'Leary's; I know that he went there as a Magistrate only.

O'Leary was in a bad state that night and could not give his deposition that night; but two men, that knew all about it, were sent for; and before they came Mr. O'Farrell and the Doctor went off somewhere in a calèche; and by the time they came back, the two witnesses had come, both of them to O'Leary's. I heard O'Leary's people call one of the witnesses "Scottie"; the other was a foreigner, but he spoke capital English. As soon as the Doctor set about taking the evidence, I slipped over to the Police Station to have everything ready for the execution of the warrant.

As it was supposed that the Captain was in young Denis Maguire's, I sent O'Brien, one of our Force, to reconnoitre at young Denis', but O'Brien came back with the news that there was no appearance of anything about young Denis'.

The River Police arrested the Captain and brought him to the Cul-de-Sac Police Station; and at nine o'clock that morning, the Police marched him up by order of Dr. Russell to the Court House, to be examined before Dr. Russell.

I remember when Mr. Maguire, Inspector and Superintendent of Police, brought Captain Brocksch down to O'Leary's to take O'Leary's deposition; I saw in the breast pocket of the Captain's coat something that bore a very striking resemblance to a revolver; indeed, I am almost sure it was nothing else, and it is hardly possible that Mr. Maguire did not see it too. I told O'Leary's people that the Captain was armed. I thought it strange to see a prisoner thus armed; but as he was not in my custody, the only remark I made about it, was to mention the matter to O'Leary's people.

I know that Mr. Maguire discharged the Captain; and some days afterwards, I was one of a party of Police that searched the "Joseph Earle" for the Captain, under a warrant of Dr. Russell. We saw a curiously concealed little passage from the booby-hatch to the cabin. Nobody in the cabin could detect it, but from the booby-hatch it might be found after some little trouble. It was newly made.

I kept a sharp look-out for the Captain; but I never saw him again; he must have left the Province by stealth, or I would surely have found him.

I have frequently heard persons say, that young Denis Maguire made it his boast that he could get any person off for anything less than murder, through his personal friend and cousin, the Inspector and Superintendent of Police; and I believe that Ship-Captains generally believed that to be the case, and that many dealt with him in consequence of that belief.

And further this deponent saith not, and hath signed.

(Signed,) EDWARD REYNOLDS,
Deputy Chief of Police, Quebec.

Sworn before me, at Quebec, }
this 6th day of January, 1859. }

(Signed,) G. HENDERSON, J. P.

APPENDIX No. 2.

PROVINCE OF CANADA, }
DISTRICT OF QUEBEC. }

Thomas O'Leary, of the City of Quebec, Boarding-House Keeper, being duly sworn on the Holy Evangelists, deposeth

and saith : I was wounded by a gun shot wound in the right arm, in the month of July, 1857, by one Frederick Wilhelm Brochs, Master of the Prussian Ship, "Joseph Earle," then in the Port of Quebec. On the 27th day of July, 1857, Dr. Russell came to my house, accompanied by Mr. Reynolds, the Deputy Chief of the City Police, and Mr. O'Farrell, Advocate, for the purpose of taking my deposition, as I considered myself in a dangerous state. Dr. Russell took the depositions of other witnesses; the name of one of these witnesses is William Shiell; the other two are foreigners, and spoke the Prussian language, they also spoke the English language fluently and understood it well, and answered in good English all questions put to them, and did not require any interpreter; their depositions were read over to all these witnesses, and they were severally asked if they contained the truth, to which they answered "Yes," before they were sworn by Dr. Russell. My deposition was also read over to me before I was sworn by Dr. Russell. The names of these two foreigners I do not know. When Dr. Russell first came to my house Drs. Jackson and Moffatt were sitting in my room talking together. Dr. Russell came over to my bed-side and looked at the wound, and proposed to the two Doctors that the wound should be properly probed, and that the pieces of cloth that were carried into the wound by the bullet should be extracted, he said he was sure from the appearance of the wound that they were still in the flesh, and were the cause of the fever and irritation that I was then suffering from. Dr. Jackson said that it would be highly improper and dangerous to do so in my case, as the blood vessels might have been injured by the ball, and that it might cause the wound to bleed. Dr. Russell then told them that they were not treating me properly, that I was running greater risk of my life from their unskilful treatment than from the wound in my arm, my clothes, bed and bed clothes were at this time saturated with the ice-water they were applying to my arm, which Dr. Russell said was sure to bring on inflammation of my lungs, and that I would not be the first man killed by unskilful treatment of a gun-shot wound, and mentioned a case to them of a man who died of a gun-shot wound, while under Dr. Jackson's care in the Marine Hospital, in consequence of unskilful treatment, that the man who shot him was tried at the Criminal Court and acquitted, one of the Jurors declaring in the jury-box that they were of opinion that the man came to his death by unskilful treatment. Dr. Russell told them that instead of the ice-water, a warm soothing poultice should be applied—the arm supported by a proper apparatus, and that my wet clothes and bedding should be exchanged for

dry. Dr. Russell then said he did not come here in the capacity of a Physician, but had come with the Police, and at their request to take O'Leary's deposition, as he had been represented to him as being in a dangerous situation, and Mr. Maguire, who is paid for this duty, was absent from town, and that it was in the interest of Justice that he made these remarks upon the treatment of the case—that in his double capacity of Physician and Justice of the Peace, he felt it his bounden duty to do so, as it would be wrong that whoever it might be that inflicted the wound, should be made responsible for their want of professional skill. Dr. Russell then took the depositions of the other witnesses I mentioned above. Of my own accord I pursued the plan of treatment I heard Dr. Russell recommend, and experienced almost immediate relief. Drs. Jackson and Moffat continued to attend me the next day and the following morning, and then because I continued to follow the plan of treatment recommended by Dr. Russell, they asked me, who I preferred to attend me, Dr. Russell or them, I told them Dr. Russell, they then left my house and did not return. Either six or seven pieces of cloth came from the wound, it was only after the last piece left the wound, that I was able to leave the house, which I could not do till the end of August.

In the month of August, John Maguire, Esq., Inspector and Superintendent of Police, came to my house and into my bed-room without any previous intimation to me; he was accompanied by several other men, Captain Brocksch, who wounded me, was one of them. Mr. Maguire came over to me, I was then lying in my bed, he felt my pulse, and asked me how I felt, I told him I felt very weak, he then asked me if I was prepared to give my deposition before the accused, or words to that effect. I told him I had already made my deposition before Dr. Russell, he then said you must give your deposition before the accused. I said "Is the accused here," he said, "yes," and my wife who was also present in the room said "yes, there he is, don't you know him," and my mother who was also in the room said "yes, there he is, you might know the murderer's look in his face," and they both pointed towards him. I became very excited and commenced shaking like a person in the ague. Just at this time Dr. Russell came into the room, it was his usual hour of visiting me, he came up to my bed-side and asked me how I felt this morning. I said I felt very weak and both cold and chilly, which I attributed to seeing for the first time the man who shot me. Dr. Russell said, "O'Leary, you must not excite yourself in this manner," and then sat down in a chair that was at the head of my bed. Mr.

Maguire again asked me if I was going to give my deposition to-day, I said "no, I am not fit." Dr. Russell made no interference whatever to prevent me from making my deposition, the reason I refused was because I became so nervous and excited at seeing the man who shot me, in my presence for the first time and in my own house. Dr. Russell did not say "No," "No," when Mr. Maguire asked me if I would give my evidence. Dr. Russell did not make use of such words as "do not let that man come here again with a parcel of blackguards with him," or any other words to that effect. My mother, who attended me and nursed me through my illness, was present and could testify to these facts. My servant-maid, she and my mother both left the Province in the Fall of 1857. My mother is now in Liverpool, in England. William Shiell, another witness left Quebec, the same season, and two other witnesses, who belonged to the said ship "Joseph Earle," only left Quebec about three months ago. And deponent declares he is unable to write.

Sworn before me, at Quebec, }
 this 24th day of November, 1858. }

(Signed,) OSBORN L. RICHARDSON, J. P.

APPENDIX No. 3.

PROVINCE OF CANADA, }
 DISTRICT OF QUEBEC. }

Eliza Welch, wife of Thomas O'Leary, being duly sworn on the Holy Evangelists, deposeth and saith: "I was present, along with my mother-in-law, in the room where my husband was lying in bed, when Mr. Maguire, the Inspector and Superintendent of Police, came in with Captain Brocksch, of the Prussian Ship "Joseph Earle." Mr. Pope and Mr. Pratton were also with him. Mr. Maguire went up to my husband's bed-side, and felt his pulse, and said: "How do you feel now, O'Leary?" my husband said: "I feel very bad," Mr. Maguire then put a book into my husband's hand, my husband said; "What is this for?" Mr. Maguire said, "we want to take your deposition before the accused." My husband said: "Is the accused here?" Mr. Maguire said "Yes," I immediately said: "Yes, don't you see him?" and I pointed at him; my mother-in-law also said: "Yes, don't you see the murderer in his face?" My husband then began to shiver violently, and asked for more clothes to cover him; the only clothes my husband had on, were his trowsers, and stockings,

and shirt. I then covered him with bed-clothes. Soon afterwards, Dr. Russell entered the room and went to the bed-side, and asked him how he felt to-day; he said he felt very weak. Dr. Russell said he seemed agitated and told him not to excite himself, that if he did, he, Dr. Russell, would not be responsible for the consequences, Dr. Russell then sat down in a chair that was at the bed-side. Mr. Maguire then stood up and asked my husband if he was going to give his deposition. My husband said No, that he was not fit, Mr. Maguire then left the room, followed by Mr. Pope and the prisoner. Mr. Pratton remained behind in the room after Mr. Maguire left, and then looked at us and began to laugh, and said to us: "I am glad, give it to him, it's good for him," meaning Mr. Maguire, and when going down the stairs, he turned round and repeated the words, "it's good for him." I was in the room with my husband all the time that Dr. Russell was present, and Dr. Russell never interfered to prevent my husband from giving his evidence. The only expression he made use of after enquiring how my husband felt, was, "O'Leary, you must not excite yourself." Dr. Russell was then medical attendant of my husband: he never made use of such an expression as "No," "No," to my husband, when asked by Mr. Maguire if he would make his deposition. All the time Mr. Maguire was speaking to my husband, Dr. Russell sat perfectly silent in the chair. When Dr. Russell left the room, Mr. Pratton followed him down stairs, and I went down with them. I was present with Dr. Russell all the time he was in the house, and he never made use of such an expression as "Do not let that man come here again with a parcel of blackguards with him," or any other words to that effect. After the prisoner left the house, Mr. Reynolds of the City Police Force, who was present, when the prisoner was in our house, said that the prisoner was loaded with fire-arms. My mother-in-law and my servant-maid, who could testify to the above facts, have both left the Province. And deponent declares that she is unable to write.

Sworn before me at Quebec, this }
 24th day of Nov., 1858. }

(Signed,) JOHN ROSS, J. P.

APPENDIX No. 4.

PRONINCE OF CANADA, }
DISTRICT OF QUEBEC. }

John O'Farrell, of the City of Quebec, Esquire, Advocate, being duly sworn, doth depose and say :

On the morning of Sunday, the twenty-sixth day of July, one thousand eight hundred and fifty-seven, I was met by Mr. Daly, of this City, Grocer, who told me that an Irishman, from Champlain Street, had been murdered on the previous night by a Prussian Captain, who dealt with Denis Maguire, Junior, then carrying on business in his own name as a Ship Chandler, in this City, and that the Captain was lying concealed in the house of Denis Maguire, Junior, until he, the Captain, could get away with his Ship in the morning. Late in the afternoon of the same day, I was called upon by one McTaggart of Quebec, Boarding-House Keeper, and informed by him, that Thomas O'Leary, of Quebec, Boarding-House Keeper, desired to retain me professionally for the prosecution of a Prussian Captain, who had shot O'Leary, during the previous night.

The amount of my fee having been settled between us, I proceeded at once, in company with McTaggart, in search of John Maguire, Esquire, Inspector and Superintendent of Police for the City of Quebec. On arriving at Mr. Maguire's house, we were informed by Mr. Maguire's servant, that Mr. Maguire was not at home, but that he, Mr. Maguire, had gone to the country, on the previous evening, on a fishing excursion.

Accompanied by Mr. McTaggart, I next proceeded to the Cul-de-Sac Police Station, in the hope of being able to induce the Police, in the absence of Mr. Maguire, to arrest the Captain, against whom the charge sought to be preferred was unquestionably one of Felony ; but the Police refused to interfere, in the absence of any warrant. With a view to stimulate the Police to exertion in the matter, I represented to them the facts, and I stated, moreover, that Mr. Maguire was absent on a fishing excursion, and that, as they might easily observe from the rear of the Station house, the Captain's vessel was loaded, and hauled out from her loading berth into the stream, and ready to be towed away at a moment's notice ; I futher mentioned to the Police that I had been credibly informed that the vessel had her Pilot on board, and would proceed to sea with the first ebb-tide.

All my attempts to induce the Police to move in the matter without a warrant proved unavailing. I was told by the Police that even if Mr. Maguire were absent, there were other

Magistrates to whom I might apply. I answered that it was next to impossible to find an unpaid Magistrate to act upon a Sunday, and I was about to say to the Police that they ought to know well enough that, could I have helped it, I would not have thought even of applying to Mr. Maguire, when some one present, I forget who, asked me if I were certain of Mr. Maguire's absence. I then, for the first time suspected that the servant's answer to my enquiry for Mr. Maguire, might have proceeded from Mr. Maguire's well known unwillingness, when applied to, outside his office-doors or between his office-hours, to attend to any business pertaining to his office.

Such suspicion induced me to request Mr. Edward Reynolds, then a Sergeant of Police, and now Deputy Chief of Police of this City, to accompany me to Mr. Maguire's: on our arrival there, I was again assured by the servant that Mr. Maguire was absent.

I was then advised by Mr. Reynolds to apply to some other Magistrate, as the case appeared to be pressing, and as the wounded man was reported to be in a most dangerous condition. Aware of the disinclination of most Magistrates in this City to perform, at any time, but particularly on a Sunday, any part of the duty assigned to Mr. Maguire, and for the performance of which Mr. Maguire alone was paid, I felt unable, at the moment, to think of any particular Magistrate who might be disposed to act, in a case against one of that powerful class known as Ship Captains. On my expressing as much to Mr. Reynolds, he suggested the name of Doctor Robert Henry Russell.

I immediately adopted Mr. Reynolds' suggestion, and we both proceeded in search of Dr. Russell; not finding him at home, but learning that he had gone out visiting his patients, we followed him from house to house where he had been visiting, and at last, about eleven o'clock, at night, we found him at the house of one Scully, in Champlain Street; the Doctor was then attending to Scully's child, who was then bleeding violently from the nose. We waited without disturbing Dr. Russell, until we saw that he had succeeded in staunching the flow of blood.

I then exposed to the Doctor my business; and I told him that Thomas O'Leary had been shot, during the previous night, by a Prussian Captain, whom I then suspected to be concealed in the house of his, the Captain's, Slip-Chandler, that O'Leary was then lying wounded in a most dangerous condition; here I was interrupted by Dr. Russell asking me in an abrupt manner: "Why don't you go to Maguire, " who is well paid for it? I tell you what, O'Farrell, I'll

"have nothing to do with the case. Go to Maguire." Mr. Reynolds then interposed and said to Dr. Russell, that Mr. Maguire was absent, that I could find no other Magistrate, and that, unless he, Dr. Russell, would consent to act, the Police would not arrest without a warrant, and that the Captain would be away from Quebec, long before Mr. Maguire could return in the morning.

On Mr. Reynolds' representations, Dr. Russell consented so far, that he went with us to observe the condition of the wounded man.

At O'Leary's, while we were there, we saw Drs. Jackson and Moffatt. O'Leary's arm was pierced above the elbow, by a gunshot wound; and there was on his right side, a contusion, corresponding with the wound in the arm, and looking as if the ball had become spent there, after passing through the arm.

O'Leary was lying in his shirt and trowsers, on a bed soaked with ice-water, which, by the orders of Drs. Jackson and Moffatt, was being kept constantly and abundantly applied to the wound. O'Leary's injured arm was swollen to a very remarkable degree, and the skin upon it was hard and shining very much. O'Leary complained and moaned a good deal; he appeared to be suffering very much from pains constantly increasing. Dr. Russell did not, while we were there, or at any time in my presence or hearing, say to Dr. Jackson, that I had called upon him, Dr. Russell, to give medical evidence in the case. The very reverse is the fact; for, when Dr. Russell, Reynolds and I approached O'Leary's bed-side, and when Dr. Jackson, without waiting to learn our business, expressed his surprise at Dr. Russell's entrance, Dr. Russell distinctly stated to Dr. Jackson, that he, Dr. Russell, had not come there, in his capacity of a Surgeon, but that he, Dr. Russell, had only come there at the request of the Police, and in his capacity of a Magistrate to take, if necessary, O'Leary's deposition as to the facts, and to hold if necessary also a judicial investigation upon them.

While we were at O'Leary's, I heard Dr. Russell express very grave doubts as to the propriety of the treatment prescribed by Drs. Jackson and Moffatt; and indeed, I myself witnessed the rapid change wrought, for the better, in the condition of O'Leary's wound, by a course of treatment different from that of Drs. Jackson and Moffatt.

Being of opinion that O'Leary's wound was of a very severe nature, Dr. Russell determined on proceeding with an investigation of the case, and, as O'Leary appeared to be too unwell to give his deposition then, messengers were sent for the two men whom O'Leary stated to have been in his com-

pany when he was shot; in the meantime, Dr. Russell, being desirous of procuring the assistance of Mr. Doucet, Clerk of the Crown and of the Peace, requested me to accompany him as far as that gentleman's house. We found Mr. Doucet at home, but in his bed. Mr. Doucet, on letting us in, informed Dr. Russell that it was by no means necessary that he, Mr. Doucet, should be present; but he gave us briefly the form of the warrant and the description of the offence, and enabled us to procure the form of the deposition heading.

After leaving Mr. Doucet's and after procuring the necessary forms, we returned to O'Leary's where we found, awaiting us, the two men Shielles and Linz, whom Dr. Russell had sent for; and sometime between the hours of one and two of the clock in the morning of Monday, the twenty-seventh day of July of the year before last, Dr. Russell received the voluntary statements on oath of Shielles and Linz. Those statements were, under the supervision of Dr. Russell, carefully and correctly embodied in two sworn depositions, respectively read over to the witnesses, and acknowledged, under oath, by them. After reading the depositions over, Dr. Russell came to the conclusion of issuing his warrant for the apprehension of the person, who had fired at, and shot O'Leary; and as the name of that person had not then become known to the witnesses, but as two persons then present volunteered to point him out to the Police, Dr. Russell issued his warrant for the apprehension of a person to be pointed out, according to the almost daily practice of the Police Office, at Quebec.

It was then suggested by Mr. Reynolds to send a Policeman over towards the residence of Denis Maguire, Junior, to ascertain if there were lights in the house, or anything else about it, tending to indicate the presence of the Captain. Constable O'Brien was accordingly despatched upon that duty, and upon his return shortly after with the information that the house of Denis Maguire, Junior, presented no unusual appearance, the warrant was placed in the hands of the River-Police for execution.

Shortly after break of day, on Monday morning, John Battle, one of the Coxswains of the River-Police, proceeded with his boat's crew towards the ship for the purpose of executing the warrant; he was accompanied, on that occasion, by me and by one of the persons who had so volunteered to point the Captain out. When we neared the ship, I suggested to the Coxswain to request the crew of the vessel to be mustered, so that the man, who accompanied us, might have a fair opportunity of pointing out the accused. Accordingly, when we had reached the deck of the vessel, Battle

asked to see the Captain; a person then came out of the cabin, and represented himself to be the Captain of the "Joseph Earle," and correctly too, as I afterwards discovered. Upon the Captain's asking what was the matter, Battle explained to him the object of his visit, and asked to have the crew mustered before him. In the meantime, the person who had accompanied the Police with me, said to me, in a whisper, and looking towards the Captain: "That's the man." Before Battle had done speaking, the Captain interrupted him, saying: "No use to muster the crew; the crew did not do that: it was myself that fired that shot, and out of mine own pistol, when I told them for Gott's sake to come back, or I would fire."

On hearing the Captain admit that it was he who had fired at O'Leary, I became desirous of connecting the shot fired by the Captain with O'Leary's wound, and of excluding the supposition of O'Leary's wound having been caused by any other shot; so I asked the Captain if any other shot had been fired from on board his vessel that night. The Captain promptly answered: "No; I only fired that one shot."

Battle then arrested the Captain, and brought him to the Police Station in the Cul-de-Sac, where the Captain remained until nine o'clock of that (Monday) morning, when, by order of Dr. Russell, he was brought up to the Police Office, and before Dr. Russell, then and there in attendance in one of the rooms where such investigations are often carried on. I was also in attendance there with the witnesses, Shielles and Linz, ready to proceed with the case before Dr. Russell, who had first had possession and cognizance of the fact.

Just as we were about to proceed with the case, I saw, to my astonishment, the Police enter the room, and remove the prisoner, Captain Brocksch, into Mr. Maguire's own room.

I shortly followed the prisoner into Mr. Maguire's room; and entering into conversation with Mr. Maguire, I informed him that I had been retained by O'Leary to prosecute the Captain; and I then asked Mr. Maguire, if he Mr. Maguire were aware, that it was upon Dr. Russell's warrant that the Captain had been arrested, and that Dr. Russell had first had possession and cognizance of the case. I made those observations to Mr. Maguire for two reasons, that is to say: Firstly, because the experience of several years' pretty extensive practice before him had taught me, that, in few cases where Mr. Maguire's sympathies or his antipathies were not evenly balanced, and in very few cases of Ship-Captains dealing with Denis Maguire, the younger, could strict and impartial justice be expected from the Inspector and Superintendent of Police, and secondly, because I then was, and still am, of the opinion

that Mr. Maguire had no jurisdiction in the matter, and this, after Paley, who says (Convictions, Part I. Chap. 1. Sec. 5,) at page 27 of Deacon's Edition of 1838: "All the Justices of each District are equal in authority, but as it would be contrary to the public interest, as well as *indecent*, that there should be a contest between different Justices, it is agreed, that the Jurisdiction, in any particular case, attaches in the first set of Magistrates, duly authorized, who have possession and cognizance of the fact, to the exclusion of the separate jurisdiction of all others. So that, the acts of any others, except in conjunction with the first, are not only void, but such a breach of the law as subjects them to indictment."

In answer to my question, Mr. Maguire smiled, and said that he was aware of the fact. I then asked Mr. Maguire, if he, Mr. Maguire, intended to carry on the investigation in the absence of Dr. Russell; Mr. Maguire answered me with another smile and with another "yes." Mr. Maguire after a short pause, asked me if I intended to appear before him, Mr. Maguire, as the Attorney of the private prosecutor, O'Leary; I replied that I did not intend to appear before him, Mr. Maguire, as I did not conceive, that, under the circumstances, he had jurisdiction in the matter. I, in consequence, declined appearing before Mr. Maguire, as O'Leary's Attorney, because I did not wish to expose my client, O'Leary, by any act of mine, to be sued by the Captain, by reason of Mr. Maguire's illegal detention of the Captain, in the absence of Dr. Russell. However, although I did not appear on behalf of O'Leary, or take part as his Attorney, in the investigation carried on by Mr. Maguire, I nevertheless closely observed the manner of that investigation; and, from notes taken by me at the time, and which I still preserve, I can state, that Mr. Maguire's conduct was highly partial to the prisoner, and fully justified the fears, which, from the first, I entertained as to the probable result of such an investigation, when carried on by him.

Amongst other instances of his conduct, on that investigation, I may mention that most of the witnesses examined by Mr. Maguire for the prosecution, are persons whose names were furnished by Richard Pope, Esquire, Junior Counsel for the prisoner; so that where the prisoner had, in some sort, the selection of the witnesses to be produced against him, little evidence of a material nature could reasonably be expected. One of those lists of witnesses, with instructions to the Clerk to summon them, I have still in my possession; it is in the hand-writing of Mr. Richard Pope, and bears a few words in the hand-writing of Mr. Pratton, who wrote down the depositions taken by Mr. Maguire.

I may also mention as another instance of the manner in which that investigation was conducted, that, when the Mate of the vessel was under examination before Mr. Maguire, and, in answer to some questions of Mr. Maguire, as to what was said by a person, whom the Mate had hold of, and whom the Mate was shaking over the ship's side, the Mate in speaking of that person, said: "I heard that man say: *"I'll drown myself"*"; the prisoner immediately interrupted the Mate, and said to Mr. Maguire, "He says that he heard the man say *"I'll drown you."*" Without waiting to learn, from the Mate himself, what he had really said, Mr. Maguire dictated to the Clerk and caused to be written down, the words: *"I'll drown you,"* instead of the words: *"I'll drown myself."* The words as put into the witness' mouth by the prisoner, and as written down by Mr. Maguire's orders, have a very different complexion from those really uttered by the witness; in the one case, a man, held over a ship's side, by another, very naturally exclaims *"I'll drown myself;"* while in the other case, the words *"I'll drown you,"* would naturally imply a threat from the man, and it might in the eyes of many justify, or perhaps only palliate, the Captain's subsequent firing.

Many other perversions of the evidence, of the same, if not of a worse kind, were noticed and noted down by me at the time, and are now present to my memory, but would require, for their relation, too much of the space allotted to this affidavit.

I shall conclude my notice of Mr. Maguire's conduct at the investigation, by remarking, that, one evening during that investigation, and after the adjournment, I showed, to Mr. Pratton, the list of witnesses already adverted to by me, and, in conversation with Mr. Pratton, whom I judged, from his conversation, to think but lightly of Mr. Maguire's impartiality or of his abilities, I hinted at my possession of that list of witnesses being likely to be of service to O'Leary hereafter, and I mentioned some of the perversions of evidence I had seen Mr. Maguire practice during the course of that investigation; the next morning when I made my appearance, to watch the case as usual, I found Mr. Maguire and his Clerk, and the prisoner and his Counsel, in the large room known as the Magistrate's Room, engaged in the investigation.

On my sitting down in the room, Mr. Maguire asked me if I appeared as Counsel for O'Leary; I answered in the negative. Mr. Maguire then asked me in what capacity, and by what right, I came there. I replied that I had come there, as a spectator and to witness the investigation, which I deemed to be public, by virtue of the law. Mr. Maguire

seemed absorbed in reflection for a few moments, and then desired his Clerk, the prisoner and the witness to move into his, Mr. Maguire's, inner or private office; then inviting the prisoner's Counsel in, he, Mr. Maguire, followed them all in himself; and that was the last opportunity which I had of taking notes of Mr. Maguire's conduct in the investigation of the case of the Queen vs. Brocksch.

In the meantime Mr. Maguire carried on, in his private office, the remainder of the investigation; and I produced, before Dr. Russell, at various intervals of time, several witnesses, namely Rudolph Stobans, John Arendt, Gottlieb Radzam, Robert Smith, John Grichnen, and August Müller, whose depositions were reduced to writing, with the intention of carrying on the investigation before Dr. Russell, as soon as Mr. Maguire should have discharged the prisoner.

All the witnesses whom I have lastly named understood the English language; and most of them could speak it well; but as a precautionary measure against their afterwards asserting their want of knowledge of the English tongue, Dr. Russell insisted, before swearing them, on having an interpreter sworn to translate to each of the witnesses, John Arendt, Gottlieb Radzam, Grichnen, and August Müller, the respective depositions made by them; and I was present when Mr. George T. Busch, who had been giving me lessons in German, was sworn to interpret, to John Arendt, Gottlieb Radzam and John Grichnen their depositions; and he did interpret, or appear to interpret to them their depositions; and after having done so, he affirmed to Dr. Russell, and upon his oath, that he so translated correctly to them their depositions, and that they acknowledged their signatures and the truth of such depositions. Mr. Busch was a partner in the firm of "Sinn and Busch," of this City, Brokers.

With regard to August Müller, his deposition was translated to him by Abraham Solomon, a German Jew, who was also sworn to interpret to Müller his deposition, and who also affirmed, that he had correctly translated that deposition to August Müller.

After the depositions had been so severally read to the witnesses, John Arendt, Gottlieb Radzam, and John Grichnen they severally acknowledged, upon oath, before Dr. Russell, their signatures to the depositions, and, each for himself, that his deposition contained the truth, the whole truth and nothing but the truth. In like manner after August Müller's deposition had been read to him, he acknowledged, on oath before Dr. Russell, his signature to the deposition, and that it contained the truth, the whole truth, and nothing but the truth.

With reference to Radolph Stobans, he understood English well, and spoke it fluently. He told me that he had acquired his knowledge of English, while serving on board British vessels; Smith, being a British seaman, understood his mother tongue of course. The depositions of Stobans and of Smith were well understood by them before they signed them; in fact Smith read his own deposition over while I was reading Stobans' deposition to the latter. Smith could moreover speak German fluently.

In the course of that part of the investigation which Mr. Maguire held in his inner or private office, and from which I was excluded as I have already mentioned, Mr. Pratton met me in the Police Office, one evening, and said to me in a laughing tone: "So, you're a pretty fellow to examine witnesses, and have their depositions sworn to, without being read over to them." Having seen Smith and Radzam hanging about Mr. Maguire's private office all day, I at once suspected that Mr. Pratton might have been alluding to those witnesses, so I walked out into the passage, and there meeting with Smith, I asked him if he had stated that he did not know the contents of his deposition before swearing to it, before Dr. Russell. Smith hung down his head and said the Captain had promised him his discharge at this port, if he, Smith, would come up and swear in his, the Captain's, favor. That statement of Smith did not surprise me, as John Arendt had already related, in his deposition before Dr. Russell, a similar but unsuccessful attempt to corrupt him, John Arendt. I was pleased afterwards to see that the Captain did not keep his promise to Smith; for I afterwards saw Smith on board the "Joseph Earle" off Goose-Island, when he complained to me that the Captain had not kept his word, and I told Smith that it served him, Smith, right.

During the progress of that investigation before Mr. Maguire, I frequently saw Denis Maguire, the younger, in the Police Office, speaking to the Inspector and Superintendent of Police, with whom he used sometimes to be closeted. Mr. Denis Maguire, Junior, used generally to be accompanied, to and from the Police Office, by one or more Prussian Captains who, openly and in a very lively manner, sympathised with the prisoner.

It was, I think, on the thirteenth day of August in the year before last, on a Thursday, if I mistake not, that seeing no stir in the Police-Office, and seeing Mr. Pratton come out of Mr. Maguire's office, with some papers, which I took to be depositions, I ventured to ask Mr. Pratton what Mr. Maguire had done with the Prussian Captain; Mr. Pratton replied: "Discharged, *of course*," laying on emphasis on the

words "of course." I said that I had guessed as much. Mr. Pratton began to laugh in his quiet way, and said: "O'Leary may thank his Doctor and his Lawyer for that." From those words of Mr. Pratton, I inferred that Mr. Pratton meant to convey the idea that the result might have been different, had I not been the lawyer in the case, and had not Dr. Russell been connected with it. I answered Mr. Pratton, by saying: "It's not all over yet, though." I accordingly sent for August Müller, the Steward of the "Joseph Earle," and the next day, I brought him before Dr. Russell. The deposition of August Müller proved to be most important, from his position as Steward of the ship, he had been enabled to see what was done by the Captain in the cabin; and Müller deposed before Dr. Russell, to having seen the Captain, on the night in question, load three pistols, two of which were large horse-pistols, and one a small pistol; the large pistols, Müller said, were loaded by the Captain with a five inch charge of powder, ball and salt. Müller further deposed, on that occasion, to having seen the Captain fire off one of those large horse-pistols at the boat, and to have heard the whiz of the ball, as it left the pistol.

This new fact of the Captain's having deliberately and shortly before, loaded, with ball, the pistol by him discharged at O'Leary, induced Dr. Russell to deliberate whether he should have the Captain re-arrested; he expressed to me a desire to have the opinion of the Solicitor General, Mr. Ross, upon the point.

I pressed Dr. Russell to issue his warrant immediately, and I mentioned to him that I was almost sure the Captain would leave town that evening; but Dr. Russell was peremptory, and we parted, agreeing to re-assemble at the Court House that afternoon.

I then went in quest of Mr. Ross, and, having found him, I exposed to him the facts. Mr. Ross was of the opinion, that, upon such new fact being sworn to by Müller, not only had Dr. Russell a right, but that it was moreover Dr. Russell's duty as a Magistrate, to issue such warrant for the re-apprehension of the Captain. When I again met Dr. Russell, at the Police Office, that afternoon, pursuant to appointment, I again urged him to issue his warrant; but Dr. Russell stated, that, not having been able to see Mr. Solicitor General Ross, as yet, he would not do so without having seen Mr. Ross. I mentioned to Dr. Russell the conversation I had had with Mr. Ross, together with Mr. Ross' opinion in the matter. Dr. Russell still declined to act, but consented to go with me to speak to Mr. Ross.

We met Mr. Ross in St. Lewis street, and there Dr. Russell

was informed by Mr. Solicitor General Ross, that it was Dr. Russell's duty to issue his warrant for the re-apprehension of the Captain.

The Solicitor General's opinion determined Dr. Russell to act, and the second warrant was accordingly issued by Dr. Russell.

Under that warrant a diligent search was made for the Captain; but the Captain could not be found even on board his own vessel. I was present when the "Joseph Earle" was searched by the Police, acting under Dr. Russell's second warrant, for the Captain, opposite an Island in the St. Lawrence, and which, I think, bears the name of Goose Island; and I then saw in the booby-hatch of that vessel a recently made and secretly contrived opening, through which one man could, with difficulty, pass from the cabin to the booby-hatch, this opening was so contrived as not to be visible from within the cabin, and to be only visible in the booby-hatch after careful examination. The vessel was then in charge of the former Mate, who informed me that the Captain, to avoid arrest, had altered his mind about going home in the vessel, and had left the country by another way.

On the return of the Police to town, after their search of the "Joseph Earle," I requested Dr. Russell to issue a duplicate warrant to be confided to Mr. Wylde, who was then about to proceed to England with a prisoner who had broken jail in England. To the issuing of a second warrant, Dr. Russell objected, unless the Solicitor General thought that it could be done; Dr. Russell and I accordingly left the Police Office to consult with Mr. Ross; we found him in the Crown Office; and Mr. Ross, on being consulted, was of opinion, that Dr. Russell could legally do so; Mr. Ross cited the Corrigan case as an instance of several duplicate warrants having been issued. I may mention here, that having been concerned in the Corrigan case, as Counsel for the prisoners, I had seen one Coroner's warrant in the hands of Colonel Ermatinger, another in the hands of William Harrison; Major Johnson and Mr. Robert Rickaby of Inverness, were also said to have each had another. All those warrants which I saw were duplicates, the one of the other.

However, Mr. Ross objected to the expense, attendant on the execution, in England, of such warrant, being defrayed by the Treasury of Canada; but, upon my assuring him that the necessary funds had so far been, and would in future be, contributed by the private prosecutor, the objection of Mr. Ross ceased and he told Dr. Russell that there could be no objection to the issuing of the duplicate warrant I asked for. The reason why I asked for the duplicate warrant is that

there was not sufficient time to procure the original warrant from the Constable who had it, before the sailing of the steamer in which Mr. Wyldé was about to embark for England.

Mr. Wyldé returned to this country some months afterwards without having been able to procure any tidings of the Captain; and O'Leary has been unable to bring the Captain to justice; and it is to my knowledge that O'Leary has spent a very large sum of money, probably one hundred pounds, without being able to accomplish that object; and I feel convinced, that, had the Captain been brought to trial for wounding O'Leary, a conviction would have ensued.

I esteem it due to the Inspector and Superintendent of Police, to mention that he and I have not, I think, spoken to each other since the year one thousand eight hundred and fifty four, on any topic unconnected with the business of his office, except, on one occasion, when, as I was about to proceed to Toronto, he spoke to me disapprovingly of a Bill, introduced into the Legislature by Mr. Ross, in relation to houses leased to that class of persons known as crimps, and upon which Bill I would naturally be called to give a vote in the House.

And I further add that I have been able to devote, to the preparation of this affidavit, a few leisure moments only in each week, and that I have had it in progress for upwards of four weeks.

And further deponent saith not, but hath signed.

(Signed,) J. O'FARRELL.

Sworn before me at Quebec, }
this 3rd January, 1859. }

(Signed,) E. DUGAL, J. P.

APPENDIX No. 5.

PROVINCE OF CANADA, }
DISTRICT OF QUEBEC. }

John McTaggart, of the City of Quebec, Boarding-House Keeper, being duly sworn doth depose and say: On a Sunday evening, in July, of last year, I was requested by Thomas O'Leary, who was lying at the time dangerously ill, to all appearance from a shot he had received in the arm the previous night, to go and speak to Mr. O'Farrell, to fee him to prosecute the man who had shot him, O'Leary. I accordingly went to Mr. O'Farrell and feed him for that purpose. Mr. O'Farrell and I then went to look for Mr. Maguire, the Police Magistrate; Mr. Maguire was absent, as the girl told us, on a fishing excursion somewhere, I forget where, in the

country. We then went down to the Police Station in the Cul-de-Sac ; Mr. O'Farrell was trying to persuade the Police to take the Captain up ; but the Police would not do it for him, without a warrant. Mr. Edward Reynolds, one of the Sergeants of Police, consented to go, with Mr. O'Farrell, back again to Mr. Maguire's, to see if Mr. Maguire was in. I went along with them both ; and when we came to Mr. Maguire's, Mr. O'Farrell was told by the girl again that Mr. Maguire, was not at home, that he was away in the country, fishing ; after that, Mr. Reynolds asked Mr. O'Farrell why he would not go to some other Magistrate ; I heard Mr. Reynolds mention, Dr. Russell's name to Mr. O'Farrell, as a Magistrate ; Mr. O'Farrell was afraid Dr. Russell would not act. However, away they went and I after them in search of Dr. Russell. We found the Doctor at last, after a good deal of searching, in William Scully's, attending, to a sick child. When the Doctor was done, Mr. O'Farrell up and spoke to him, about O'Leary's case, and asked him to get the Captain taken up. But the Doctor would not do it at first, but ordered us all off to Mr. Maguire's, saying Mr. Maguire was well paid for it. Then Mr. Reynolds began to reason with the Doctor, and persuaded him, at least, to go over and see O'Leary, and how O'Leary was. When we went over to O'Leary's, we saw Drs. Jackson and Moffat there ; I am not sure whether we came in before them or after them. When we went in there, we had some talk with the people of the house, before we went to the bed-side ; and when we did go to the bed-side, Dr. Jackson began to grumble at Dr. Russell's meddling with his patient ; Dr. Russell told Dr. Jackson that he did not come there to meddle that way, that he only came there as a Justice of the Peace, and to take proceedings against the Captain. When the Doctor saw how sick O'Leary was he said he would take the deposition ; and so I went for John Linz, a foreigner who was with O'Leary when O'Leary was shot. When I brought Linz there, Shiellies and Linz were examined, by the Doctor, and their evidence was taken down on paper ; it was coming on day of the Monday morning, when the evidence was taken ; O'Leary was too sick to be examined that morning. After that the Doctor signed some paper that I heard them call a warrant, and the Police went off to make a prisoner of the Captain.

John Linz, the foreigner, could speak just as good English as any one of us ; he acted as clerk to me for four months, and could write English, I believe. The depositions were read out to the witnesses before they swore to them, and I remarked that with the exception of the depositions being put

in some few places in a little better English than they spoke, those depositions were just as they had told their story, and even in those few places, the sense was the same. It was their own story that was put down on paper.

On Monday morning, shortly before nine o'clock, I saw the Captain go up from the Police Station in charge of the Police; and I followed them up with the witnesses, Shielles and Linz, to the Court. I there saw Dr. Russell ready to begin the case; the Captain and the two witnesses against him were there, also before the Doctor. When the Doctor was beginning, I saw the Police come to the room where Dr. Russell was, and take the Captain away from before Dr. Russell into Mr. Maguire's room. Mr. O'Farrell followed them into Mr. Maguire's room, and when he came out, I heard him tell Dr. Russell that Mr. Maguire was going on with the case without him, Dr. Russell; Mr. O'Farrell said moreover that he did not think that Mr. Maguire had a right to do so. And deponent hath signed with a cross.

his
JOHN ✕ McTAGGART.
mark.

Sworn before me at Quebec, }
this 23rd day of Dec., 1858. }

(Signed,) W. H. ANDERSON, J. P.

APPENDIX No. 6.

QUEBEC, 14th January, 1859.

R. H. RUSSELL, Esq., M. D.

SIR,—I have to acknowledge the receipt of your letter of the 11th instant, enclosing certain documents relating to the case against Brocksch, for feloniously shooting at and wounding one Thomas O'Leary, and requesting me to examine them, and to give you a statement in writing of the several consultations you had with me while Solicitor General, and of the nature of the opinions I then gave you upon this case, also of the opinion which, you say, "I repeatedly expressed to you as to the determination to screen the accused from the consequences of his crime," and requesting me also to state whether the Prussian or Imperial Government, in my time, made any application to the Canadian Government touching this matter, and to include in my statement my opinion of your capacity, judgment and conduct as a Magistrate.

I have also to acknowledge the receipt of your letter of the 13th instant, giving me, as requested in my letter of the 12th

instant, your own version of the interviews had with me, in order to enable me to recall to mind the particulars and to corroborate your statement in so far as my memory would bear me out.

I have a distinct recollection of your speaking to me touching the right of another Justice to intermeddle singly and without your concurrence in the investigation of that case, in which you had already exercised jurisdiction and were proceeding. I gave you as my opinion that all the Magistrates of the District were equal in power and jurisdiction; and that no Magistrate had any right to wrest from your possession and control a case in which you had commenced the investigation, and that if you were then proceeding in it, as I believe you were, the Inspector and Superintendent of Police had no right to assume jurisdiction over it to your exclusion; and the onus lies upon him to justify that course.

I also gave you, as my opinion, that you had a right to issue a fresh warrant upon new facts coming up, and also a duplicate warrant when circumstances required it. I have no recollection of having repeatedly, or at all, expressed to you my opinion that there was a determination to screen this man. But I have a distinct recollection that my impression was that there was a desire to screen him, without being able to charge it upon any one in particular; and that impression has never been removed.

It was positively sworn to that the accused had discharged a loaded horse-pistol in the direction of the boat in which the wounded man received the shot. The accusation was attempted to be got rid of by bringing up a pistol from the ship which the ball produced would not fit, and also witnesses to contradict the facts stated by the witnesses for the prosecution,—the usual trickery resorted to in such cases. A felony had undoubtedly been committed; it would depend upon the intent proved against the person firing whether the charge to be preferred against him before a Grand Jury would be a capital felony or not. But the degree of credit to be given to the witnesses on one side, or the other, the degree of the offence, and in truth the guilt or innocence of the accused was a subject for the determination of the Jury alone. Brocksch ought, assuredly, in my opinion, to have been committed, or at least bound over to answer, and his scheming to avoid arrest, was a strong presumption against his innocence. I therefore thought and still think that you were justifiable in using all the diligence in your power and all the means which the law afforded you to bring this man to justice.

With respect to your enquiry touching any interference

in this matter on the part of the Prussian or the Imperial Government, or the Provincial Government, the fact is quite new to me; I had never heard of it while I was Solicitor General. It is quite possible that if any communication had been received from the Metropolitan Government on the subject, I might have been asked to furnish information touching the state of the case, and whether such a charge had been brought against this Prussian Captain; and whether he had been detained or enlarged on bail, or otherwise, and whether any prosecution had been brought against him. I could not possibly have any objection to furnish such information if required. But that the Prussian Government or the Imperial Government or the Provincial Government should express to the Solicitor General who was charged at the time with the prosecution of all criminal offences in Lower-Canada, and vested with the whole power of the first Law Officer of the Crown, during his non residence in Lower-Canada, or indeed to any Counsel acting in the stead of the Attorney General, would be something novel at the least. The public prosecutor stands between the Crown and the accused, and is vested with a discretion which no man, however high his authority, has the smallest right to tamper with, unless in State prosecutions where the Government stands in the relations of a client. It is quite possible that such a communication may have been received from the Imperial Government, and that looking at the Governmental law elements of that day and of this, I should have been written to on the subject had I remained in office. It is also within the bounds of possibility that I should have given it an answer of some kind; but what that answer would have been, the contingency not having occurred, I am not now called upon, nor would it be right, to say. It might be a matter of some curiosity to become acquainted with Prussian notions on these matters; it might also be instructive to learn the views of the Colonial Minister and his Government, having the assistance of the best criminal and constitutional lawyers of the day, on the same question; and it might not be without some utility to have the advantage of the learning and the law of the Lower-Canada Law Officers of the Government on this question, in order to know to what extent they would subserviently carry the doctrine of intervention or control in public prosecutions on the Napoleonic principle. But it is not probable that the Governor or Government of Canada would afford us this indulgence. Seeing, however, that one of the Government organs in this City, speaks authoritatively of an "*Ordre Métropolitain*" in this particular case, I may be permitted to say, in the inte-

rests of the people of the Lower Province, that had the prosecution of any man for crime, in the District of Quebec, been interfered with, *me consule*, an answer would have been given which would effectually prevent the repetition of such interference on the part of the Prussian Government or of any other thing called a Government in Europe, or of the Imperial or Colonial Government.

It is useless, nay mischievous, to drag into the consideration of the case of the charge of felony against Brocksch, or of that of your dismissal from the Magistracy, the question of the outrages charged to have been committed by that class of people called "crimps," upon the shipping of this Port. That such outrages have been repeatedly committed by bands of lawless men, is matter of public notoriety, and if laws have not been enacted to repress such acts, it is very much due to the Quebec Board of Trade, who represent the mercantile and shipping interest. A measure was introduced by the Government in the Session of 1856-7 of a highly stringent and penal character, and which would undoubtedly have placed an effectual check upon such disgraceful proceedings. The City Members, in the interest of a particular class, opposed it; the Board of Trade, in its wisdom, also opposed it, and it was of course dropped. But there is nothing, even under the worst circumstances (except the law of self-defence) to justify Brocksch or any other man in taking the law into his own hands, and if the hair of the head of the most lawless crimp in the Port of Quebec is touched, that individual, crimp though he be, is entitled to the protection of the Law, and the aggressor must be laid hold of and brought to trial, according to the Criminal Law of the country, be he a Prussian Pirate or a Prussian Prince. The verdict of the public, in respect to any act, however criminal, committed against the crimps generally, is, in the common phraseology of the day, "sarved them right," and few people will sympathize with them. But when the matter comes to be investigated by our Magistrates and Courts of Law, justice must be blind, and the Criminal Law impartially administered to all, and there must be no interference or tampering with those who are charged with its administration by any Governor or Government whatever.

With respect to your capacity, judgment and conduct as a Magistrate, I do not know that I am in a condition to speak positively as to these points, not having been present sufficiently often when you exercised Magisterial authority, to enable me to judge. But this I can say, that I have always observed that you discharged your duty with great zeal and with a single eye to a correct conclusion, and I recollect

nothing to the contrary; and if I have heard anything said against you by your opponents, it was that you frequently exhibited too much zeal. I can state that on an important occasion, when an individual, residing in St. Sylvester, was reported to be in a dying state, consequent upon an atrocious assault made upon him, and that it became necessary to obtain the "dying declaration" of the wounded man, and that no Magistrate could be procured there to discharge that duty, I requested you to undertake it, as you combined the two capacities of Magistrate and Physician, and to proceed forthwith to that Parish, at that time said to be in such a disturbed state, as to require some nerve in the person who would venture into it, and that you repaired to the place in the night under circumstances of great difficulty, and executed your mission to my entire satisfaction.

Believe me, your ob't. servant,

DUNBAR ROSS.

APPENDIX No. 7.

PROVINCE OF CANADA, }
DISTRICT OF QUEBEC. }

Patrick John Daly, of Quebec, Ship-Chandler and Grocer being duly sworn, doth depose and say:

One Sunday morning, last July was a twelvemonth, I met Mr. O'Farrell, Advocate, of this city, and told him that an Irishman from Champlain Street, had been, as I had been told, murdered the night before by a Prussian Captain, who dealt with young Denis Maguire. I further mentioned to Mr. O'Farrell that I had heard also that the Captain was hid in young Denis Maguire's house until he could get away with his ship next morning.

About a fortnight afterwards, I had occasion to see Mr. O'Farrell on business; when I found Mr. O'Farrell, he was in company with Dr. Russell, then a Magistrate in this City; and there were in the same room with them, one Abraham Solomon, a German Jew, who spoke very fair English, and another man, who, I believe, was a Prussian sailor. On my telling Mr. O'Farrell that I wished to speak with him, Mr. O'Farrell came out of the room with me and we spoke together of my business. When I was about to take my leave, Mr. O'Farrell seemed to think that I was displeased at his not speaking to me of my business in the room where Dr. Russell, Abraham Solomon [and the Prussian sailor were, and, as I thought, to explain away this supposed slight, he said to me that he was occupied, when I came in, with the

affidavit of a sailor of the "Joseph Earle," against the Prussian Captain whom Mr. Maguire had discharged.

The Abraham Solomon, referred to by me, has left the country since that time.

I was acquainted with Mr. George T. Busch, late of the firm of Sinn and Busch, of this city, Brokers. Mr. Busch died some time last winter.

I know that Mr. O'Farrell, before Captain Brocksch's affair, had been studying German; but I do not know whether he had any person teaching him.

I have frequently heard persons say that young Denis Maguire boasted of his influence with the Inspector and Superintendent of Police, in cases before that gentleman. I believe that Ship-Captains often believed that to be the case, and dealt with young Denis Maguire, in consequence. Indeed I heard Captain Gallagher, of the bark "Reaper," of Shields, say to another Ship-Captain and myself, that, if he ever came back to this Port, he would deal with young Denis Maguire, because young Denis Maguire had influence enough to get Ship-Captains out of their scrapes. We had been talking at the time of the law-scrapes of several and Captains by scrapes, I understood Captain Gallagher to mean; the law suits that Captains usually have before the Inspector and Superintendent of Police; this was in the year one thousands eight hundred and fifty-six, and Captain Gallagher was dealing with us at the time. When Captain Gallagher returned to this Port in he year one thousand eight hundred and fifty-seven, he did not deal with us.

And further deponent saith not and hath signed.

(Signed.)

P. J. DALY.

Sworn before me, at Quebec, }
this 10th Jan'y., 1859. }

SECRETARY'S OFFICE,
TORONTO, 3rd March, 1859.

SIR,—I have the honor, by command of the Governor General, to acknowledge the receipt of your answers to the charges preferred against you as Justice of the Peace, and to inform you that the subject will receive His Excellency's attention.

I have the honor to be, Sir,
Your most obedient servant,

E. PARENT,
Assist. Sec'y.

R. H. RUSSELL, Esq., M. D. E.,
Quebec.

